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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,887	02/04/2004	Charles H. Perrone JR.	2108.003700	3884
45488 7590 03/19/2007 WILLIAMS, MORGAN & AMERSON 10333 RICHMOND, SUITE 1100 HOUSTON, TX 77042			EXAMINER SCHILLINGER, ANN M	
			ART UNIT	PAPER NUMBER
			3738	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/19/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No. 10/771,887	Applicant(s) PERRONE ET AL.	
	Examiner Ann Schillinger	Art Unit 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 6, 7, 10-16, 18, 19, 21, 22 and 24-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6, 7, 10-16, 18, 19, 21, 22 and 24-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/9/2005</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6, 7, 10-12, 15, 16, 18, 19, 21, 22, and 24-26 are rejected under 35

U.S.C. 102(b) as being anticipated by Murray et al. (U.S. Pat. No. 4,016,606). Murray et al. discloses the following of claim 1: a device, comprising: a tibia base plate (12) comprising an upper surface (28), a lower surface (bottom surface of element 12) and an outer perimeter side surface (side near labels 34, 36) extending between said upper surface and said lower surface of said tibia base plate (see Figure 7); an insert (14) comprising an upper surface (44), a lower surface (bottom surface of element 14) and an outer perimeter side surface (side near labels 52, 54) extending between said upper surface and said lower surface of said insert, said insert adapted to be positioned above said base plate (see Figure 6); and at least one removable pin (38), wherein, when installed, a first portion (left and right ends of 38) of said pin is configured to engage an opening (34, 36) formed in a perimeter said outer perimeter side surface of said base plate and a second portion (middle portion of 38) of said pin is configured to engage an opening (52, 54, 56) formed in a perimeter said outer perimeter side surface of said insert to thereby prevent relative rotation between said insert and said base plate (col. 3, lines 32-42).

Murray et al. discloses the following of claim 2: the device of claim 1, wherein said base plate is comprised of a metal (col. 2, lines 46-47).

Murray et al. discloses the following of claim 3: the device of claim 1, wherein said insert is comprised of a non-metallic material (col. 3, lines 16-18).

Murray et al. discloses the following of claim 6: the device of claim 1, wherein at least a portion of said pin is secured in an opening in said base plate by at least one of a press-fit connection, a threaded connection, and a sintered connection (col. 3, lines 11-15).

Murray et al. discloses the following of claim 7: the device of claim 1, wherein said pin has an outer surface that is substantially flush with said outer perimeter side surface of one of said base plate and said insert (see Figure 2).

Murray et al. discloses the following of claim 10: the device of claim 1, wherein said openings in said tibia base plate and said insert are formed on anterior portions of said outer perimeter side surfaces of said base plate and said insert, respectively (see Figure 7).

Murray et al. discloses the following of claim 11: the device of claim 1, wherein said pin has at least one of a circular, rectangular and square cross-sectional configuration (circular, see Figure 7).

Murray et al. discloses the following of claim 12: the device of claim 1, wherein said pin has a smooth exterior surface (see Figure 2).

Murray et al. discloses the following of claim 15: a device, comprising: a tibia base plate (12) comprising an upper surface (28), a lower surface (bottom surface of element 12) and an outer perimeter side surface (side near labels 34, 36) extending between said upper surface and said lower surface of said tibia base plate (see Figure 7); an insert (14) comprising an upper surface (44), a lower surface (bottom surface of element 14) and an outer perimeter side surface (side near labels 52, 54) extending between said upper surface and said lower surface of said

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insert, said insert adapted to be positioned above said base plate (see Figure 6); and a removable means (38) for preventing relative rotation between said insert and said base plate, wherein, when installed, a first portion (left and right ends of 38) of said removable means is configured to engage an opening (34, 36) formed in a perimeter said outer perimeter side surface of said base plate and a second portion (middle portion of 38) of said removable means is configured to engage an opening (52, 54, 56) formed in a perimeter said outer perimeter side surface of said insert to thereby prevent relative rotation between said insert and said base plate (col. 3, lines 32-42).

Murray et al. discloses the following of claim 16: the device of claim 15, wherein said removable means for preventing relative rotation between said insert and said base plate comprises a removable pin (38).

Murray et al. discloses the following of claim 18: the device of claim 15, wherein said base plate is comprised of a metal (col. 2, lines 46-47).

Murray et al. discloses the following of claim 19: the device of claim 15, wherein said insert is comprised of a non-metallic material (col. 3, lines 16-18).

Murray et al. discloses the following of claim 21: the device of claim 15, wherein said removable means for preventing relative rotation between said insert and said base plate has an outer surface that is substantially flush with a perimeter said outer perimeter side surface of one of said base plate and said insert (see Figure 2)

Murray et al. discloses the following of claim 22: the device of claim 15, wherein at least a portion of said removable means for preventing relative rotation between said insert and said

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base plate is secured in an opening in said base plate by at least one of a press-fit connection, a threaded connection, and a sintered connection (col. 3, lines 11-15).

Murray et al. discloses the following of claim 24: the device of claim 15, wherein said openings in said tibia base plate and said insert are formed on anterior portions of said outer perimeter side surfaces of said base plate and said insert, respectively (see Figure 7).

Murray et al. discloses the following of claim 25: the device of claim 15, wherein said removable means for preventing relative rotation between said insert and said base plate has at least one of a circular, rectangular and square cross-sectional configuration (circular, see Figure 7).

Murray et al. discloses the following of claim 26: the device of claim 15, wherein said removable means for preventing relative rotation between said insert and said base plate has a smooth exterior surface (see Figure 2).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murray et al. in view of Engelbrecht et al. (U.S. Pat. No. 4,538,305). Murray et al. discloses the invention substantially as claimed, however, Murray et al. does not disclose a projection on the exterior surface of the pin. Engelbrecht et al. teaches a projection on the exterior surface of the pin in col. 9, lines 19-30 for the purpose of maintaining the pin in its requisite position.

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Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to place a projection on the exterior surface of the pin in order to maintain the pin's requisite position

Claims 14 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murray et al. in view of Hurlburt (U.S. Pat. No. 5,658,344). Murray et al. discloses the invention substantially as claimed, however, Murray et al. does not disclose making the pin out of metal. Hurlburt teaches making the pin out of metal in col. 6, lines 18-39 for utilizing the strength of the metal materials. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the pin out of metal in order to utilize the strength of the metal material.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-3, 6, 7, 10-16, 18, 19, 21, 22, and 24-28 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ann Schillinger whose telephone number is (571) 272-6652. The examiner can normally be reached on Mon. thru Fri. 9 a.m. to 4 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ann Schillinger  
March 13, 2007

  
**ALVIN J. STEWART**  
**PRIMARY EXAMINER**